

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2802 OF 2023

Imran Noorhasan Shaikh
An Indian Inhabitant, Aged about 25 Yrs.,
Residing at : Room No. 129, Qureshi Chawl,
Munshi Compound, Kashmirira Road,
Mira Road (E), Dist. Thana ...Applicant

VS.

The State
(At the instance of Kashmirira
Police Station). ...Respondent

Mr.Milan Desai - Advocate for the Applicant.
Mr.H.J.Dedhia - APP for Respondent - State.

CORAM : S. M. MODAK, J.
DATE : 22nd JANUARY 2024

P. C. :-

1. Heard learned Advocate Shri.Desai for the Applicant - Accused No.2 and learned APP.
2. As directed on the last date, the prosecution has filed papers showing all the digital evidence, so also, learned Advocate Shri.Desai has filed synopsis of the materials relied upon against him.
3. Learned Advocate Shri.Desai, material by material, submitted that all these materials are not sufficient to detain

the Applicant any more. It is true that earlier Bail Application No.387 of 2023 filed by this Applicant was withdrawn and liberty was granted to file Application after six months. At that time, this Court after hearing both the sides was not inclined to grant a bail. Now, the issue is whether the Applicant is entitled to seek bail after six months.

4. The case is based on circumstantial evidence. A minor boy of the First-Informant Heena Nahar Naro Singh was kidnapped by unknown person. The boy left the house on 31st July, 2022. At that time, his mother Heena was not there in the house. Whereas, the maternal uncle Vishnu was in the house. When Vishnu returned home at about 11.15 p.m., on 31st July, 2022, the boy was not in the house and hence, he informed his sister until realizing that her son is kidnapped. She filed complaint with Kashimira Police Station on 1st August, 2022. An offence under Section 363 of Indian Penal Code, 1860 [“IPC”] was registered.

5. The present Applicant came to be arrested on 2nd August, 2022 and Accused No.1 - Afjal was also arrested on the same date. Though prosecution relied upon various circumstances to show involvement of this Applicant, admittedly learned APP has not pointed out any material to me how the injuries were

reflected on the son. There is no eye witness. Furthermore, any weapon is not seized at the instance of this Applicant.

Whatever materials against this Applicant are as follows :-

- (i) Both these Accused and the deceased was captured by the cameras installed on Mumbai-Ahmedabad highway near Kaman Khadi.
- (ii) Both these Applicants captured by C.C.T.V., cameras installed near Sejal jewellers - Jahangid Circle, Silverpark Road, Meera Road (East).
- (iii) The phone calls were made by using the mobile handset of Vodafone company belonging to this Applicant and at that time, sim card belonging to the deceased was used. (supporting CDRs are collected during investigation).
- (iv) Both Accused persons went to the shop of one Mohammed Shahidalam Shaikh and the sim card belonging to the deceased was recharged.
- (v) Ransom calls were made to the relatives of the deceased from this mobile handset though not by the Applicant but by the Accused No.1.
- (vi) C.C.T.V., footages captured showing the visit by these Accused persons to that mobile shop.
- (vii) Identification of this Applicant by the mobile shop owner in the parade.

6. Learned Advocate Shri.Desai with all his experience and force argued that all these materials even though admitted for the sake of argument, does not further the case of the prosecution to show that the Applicant is involved in the actual incident of murder. It is true that at the time of bail, detailed

dissection of material is not required. Court has to see whether materials are sufficient to warrant a detention till the conclusion of the trial. Even though the spots on Mumbai-Ahmedabad road and the road which goes to Thane are different, the fact that the kidnapped boy was captured in the C.C.T.V., cameras itself suggest that all the three were together. Ultimately, the Accused is alleged of planning the murder. The Accused was not knowing the deceased and it is not his case that they have gone for joy ride. If the boy was with them, it is for him to explain where the boy has gone. I am constrained to say so because it is vehemently argued that after going towards Ahmedabad, there are many options available to the Accused and the boy. Even though the timings of call in between Accused No.1 on one hand and Accused No.2 on the other hand may be the same timing as recorded in the C.C.T.V., footages, at this stage, detailed dissection cannot be made.

7. A submission is made that if both are travelling on a motorcycle, it is improbable that they will talk with each other. The prosecution is only relying upon the communication in between the Accused Nos.1 and 2. So, I am not impressed by that argument. What is the reason for this Accused to insert a sim card of the deceased in his mobile handset, from where he

has brought that sim card. It is not his case that he was knowing the deceased. What is the reason for recharging that sim card. It is always said that men may lie but not the circumstance and this is more relevant when the digital evidence is there.

8. Considering all these circumstances, I do not think that prayer for bail can be reconsidered. Hence, Application is rejected.

9. These are my *prima facie* observations. Let learned trial Court need not be influenced by them.

[S. M. MODAK, J.]